

## MEMORANDUM OF UNDERSTANDING

THIS MEMORANDUM OF UNDERSTANDING (the “Memorandum”), dated \_\_\_\_\_, 2018 (Effective Date”), is by and between THE LONG ISLAND RAIL ROAD COMPANY, a public benefit corporation organized under the laws of the State of New York, and having its principal office at Jamaica Station, 93-02 Sutphin Boulevard, Jamaica, New York 11435 (the “LIRR”), and THE INCORPORATED VILLAGE OF GARDEN CITY, a municipal corporation and a political subdivision of the State of New York, and having its principal office at 351 Stewart Avenue, Garden City, New York 11530 (the “Village”). The LIRR and the Village may be referred to herein individually as a “Party” or collectively as the “Parties.”

### WITNESSETH:

WHEREAS, the LIRR is progressing its Main Line Expansion Project (the “Project”) which will, among other things, add a third main line track within the existing LIRR right of way along a 9.8 mile corridor between Floral Park Station and Hicksville Station; and

WHEREAS, the Project is described in greater detail in that certain Final Environmental Impact Statement issued by the LIRR, dated April 2017 and entitled Long Island Rail Road Expansion Project, Floral Park to Hicksville (the “FEIS”); and

WHEREAS, the LIRR is currently engaged in a procurement to select a design-builder to design and construct the Project (the design-builder so selected being hereinafter referred to as the “Design-Builder”); and

WHEREAS, the LIRR and the Village have been discussing certain concerns raised by the Village with respect to possible impacts of the Project on the Village generally and on residents of and businesses located within the Village; and

WHEREAS, in a spirit of cooperation, the LIRR and the Village have reached agreement on a series of commitments by the LIRR to address such concerns as the Project proceeds; and

WHEREAS, LIRR and the Village are entering into this Memorandum to memorialize such commitments and confirm LIRR’s agreement to observe and abide by such commitments going forward as the Project proceeds.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, and other good and valuable consideration, the receipt and sufficiency is hereby acknowledged, the parties hereto agree as follows:

A. Definitions. Terms defined preamble and recitals have their assigned meanings and each of the following terms has the meaning assigned to it.

“County” shall mean the County of Nassau, New York.

“Design-Builder” shall mean the design-builder selected by the LIRR to design and construct the Project.

“Design-Build Contract” means the contract to be entered into for design and construction of the Project between the LIRR and the Design-Builder.

“Proposers” shall mean persons, firms, or other entities submitting proposals in response to the LIRR’s RFP.

“RFP” shall mean LIRR’s request for proposals, for a Design-Builder for the Project.

“Substantial Completion Date” means the date that the LIRR substantially completes construction of the Project.

“Substantially Complete” or similar phrases shall mean attaining the stage in the progress of the Work where the Work has been completed to a point that it can be used for its intended purposes, as evidenced by the issuance of a Certificate of Substantial Completion by the LIRR pursuant to and in accordance with the Design-Build Agreement. Substantially Complete does not include punch-list type items which may need to be completed.

“Work” means the furnishing of all labor, materials, plant, equipment, tools, supervision and other incidentals required by the Design-Build Agreement and the performance of all duties and obligations imposed by the Design-Build Agreement, including work performed pursuant to the warranty provisions of the Design-Build Agreement and work necessary to reconstruct and restore all structures, appurtenances/connection thereto including, but not limited to all LIRR real property and any other real property as may be affected by the Design-Builder’s performance. The Work shall also include all planning, design, and architectural engineering services required for the proper design and construction of the Project, including but without limitation all drawings and specifications, all design clarifications and all construction phase design professional services that may be necessary or desirable for the Project.

B. Term. This Memorandum shall have a term (the “Term”) commencing on the Effective Date and expiring upon the Substantial Completion Date, except that the provisions of Section (C)(28) and (C)(29) below shall survive for two (2) years and five (5) years, respectively, after the Substantial Completion Date. In the event that LIRR does not enter into a Design-Build Contract with a Design-Builder, or otherwise abandons the Project, then this Memorandum shall be of no force or effect.

C. LIRR Commitments.

1. Village Input on Selection of Design Builder; Village Input on Design of Project. Technical Committee Level – Each of the five (5) Villages along the Project corridor (Villages of Floral Park, New Hyde Park, Garden City, Mineola and Westbury) (collectively, the “Project Villages”), will be asked to identify a technical representative of its choosing, reasonably satisfactory to LIRR, who will be invited to attend a review session with a technical committee of LIRR staff, to review and provide input on those quality of life aspects of the Proposers’ submissions identified by the subject Village as being of concern to it (e.g., community outreach plan, noise and vibration control, station and sound wall aesthetics). If the designated

representative is an outside consultant, LIRR will pay the reasonable fees and expenses of the representative associated with his/her participation in the input process, to be submitted for review by LIRR prior to engagement.

The review session for each Project Village will be separate (unless otherwise agreed to by 2 or more Project Villages and the LIRR), and will be held at LIRR's offices, at a date and time acceptable to the Village(s) and LIRR. The review session will be limited to one (1) 8-hour day.

At the review session, the Project Village representative will be provided with a copy of each Proposer's submission, with sections flagged that deal with quality of life aspects of the submission which LIRR understands are of concern to the Village. The Project Village representative will be given a period of time to review these sections, and/or any other sections dealing with quality of life aspects that he/she deems of concern to the Village. The LIRR technical committee will then make itself available to the Project Village representative for the purpose of receiving/discussing any comments or recommendations which the representative chooses to make. The representative will be asked to put his/her comments and recommendations on a standard form so that a record is made which LIRR staff can use to ensure that they are included in the LIRR evaluation of the Proposer's submissions.

In order to protect the integrity of the RFP process,

- (i) The Proposer's submissions may not be photographed, copied or photocopied by the Project Village representatives in whole or in part.
- (ii) While the Project Village representative may take notes, for purposes of formulating comments or recommendations, any notes or other writings made by the representative must remain in the custody of LIRR at the close of the review session. The notes will be returned to the representative upon execution by LIRR of a Design-Build Agreement with the Design-Builder. Notes are to be handwritten and not taken by any form of electronic media.
- (iii) The Project Village representative will restrict his/her discussion of matters considered at the review session solely to communicating his/her input to members of the LIRR technical committee at the session. He/she may not discuss or disclose any such matters, at any time and in any form, with any other person or entity, irrespective of whether such other person or entity previously executed any form of confidentiality or non-disclosure agreement in favor of LIRR. The Project Village representative will be required to sign a Confidentiality and Non-Disclosure Agreement, in the form annexed to this letter, before he/she will be allowed to attend the review session. If the representative is an employee of a consulting firm, LIRR may also require that the firm execute such an agreement.

2. Final Selection Committee Level – The Final Selection Committee charged with selecting the Design-Builder will include an outside technical expert as well as a representative with knowledge of the Project corridor and technical expertise.

3. The final Design Build Contract will require regular consultation on at least a bi-monthly basis by the Design-Builder with the Village on the design of Project elements, excluding elements pertaining to rail operations such as track, switches, platforms and railroad systems (including power, signal, communications and life safety). This consultation with the Design-Builder includes review of aesthetics for finishes including sound attenuation walls, fences, underpass walls, landscaping and station elements. Subject to specific commitments made in this Memorandum (e.g., Sections 37-39 with respect to sound attenuation walls), the ultimate decision of Project elements will rest with the LIRR. LIRR will give due and careful consideration to any recommendations received from the Village on such matters and if LIRR chooses not to implement such recommendations, it will provide the Village with a written statement explaining the reasons for its decision.

Community Safety and Quality of Life.

4. The Design-Build Contract will require the Design-Builder to create an active program of construction security and maintenance to ensure community safety and quality of life in those areas of the Village where any Project Work is proceeding, including:

- a. Keeping construction sites clean and orderly, including control of dust and runoff.
- b. Safely storing construction materials in piles, and not haphazardly.
- c. Ensuring that construction fences are uniform and neat in material and appearance, contain screening, are locked during non-use hours, have working gates, are at least 6 feet in height and repaired within a reasonable time of notice of disrepair from the Village.
- d. Entirely fencing off all staging areas.
- e. Prohibiting littering and dispersion of personal debris (e.g., cups, cans, cigarettes) on the Project construction site.
- f. Providing covered trash receptacles that are emptied daily.
- g. Performing daily clean-up of public roadways and walkways as provided in Section 35, to ensure construction debris and dirt will not affect the local community.
- h. Installing onsite/portable bathroom facilities that are unobtrusive to local communities.
- i. Protecting access to existing businesses.
- j. Providing satellite parking for construction workers so as to keep personal construction worker vehicles off of residential streets.
- k. Scheduling construction related deliveries outside of school and commuter traffic peak hours to the extent practicable while schools are in session.

- l. Providing reasonable advance notice to the Village of areas proposed to be used for staging during construction.
- m. Informing the Village when any deliveries will be made, when such deliveries are likely to cause substantial disruption to Village businesses and residents.

The Design Build Contract shall include provisions establishing a quarterly scoring of the Design-Builder's performance in respect of observing the provisions set out above in this Section (C)(4), during the period of construction of the Project. If the Design-Builder meets or exceeds a target score for a quarter, it shall be entitled to earn a \$250,000 incentive payment (up to a maximum of \$4 Million in the aggregate over the life of the Project). The minimum target score for achievement of the incentive shall be set by the LIRR in consultation with the Project Villages. Scoring shall be done by utilizing a score sheet developed by LIRR and disseminated by the Project Villages to their residents who live within a to-be-agreed upon distance from the LIRR main line. The Project Villages shall be responsible for ensuring that the scoresheets are distributed fairly, that respondents identify themselves by name and address, and that a representative sampling of such residents' opinions, without duplication or manipulation, is obtained for each scoring effort. In the event the Design-Builder does not earn an incentive for any quarterly period as a result of the score it obtains, the amount of such unearned incentive shall be transferred by the LIRR, up to a maximum aggregate amount of \$4 Million, to a fund to be held by the LIRR, to be used to reimburse a Project Village for additional expenses incurred by it to address any failure by the Design-Builder to observe such provisions within its jurisdiction, resulting in the Design-Builder not achieving the target score. A Project Village may apply for reimbursement by submitting a written requisition to LIRR, together with reasonable back-up documentation of the nature and purpose of the expenditure claimed. Payments from such fund shall not be unreasonably withheld or delayed by the LIRR. If at any time, outstanding claims against this fund exceed the remaining monies therein, the LIRR shall have the right to allocate the remaining funds in a manner it determines to be equitable.

### **Construction Duration**

5. The Design-Build Contract shall include schedule incentives to minimize community impacts. In the event the Design-Builder fails to meet certain contractual milestones under the Design- Build Contract identified in this Section (C)(5), and is thereby obligated to pay liquidated damages under such Contract to the LIRR, the LIRR shall make a payment to the Project Community Fund (see below) in accordance with the following conditions and limitations: (a) for a failure by the Builder to meet the milestone date for ending a road closure associated with a grade crossing elimination within the Village as it may be adjusted for force majeure or other causes not chargeable to the Design-Builder as per the Design Build Contract, the sum of \$3,000/week for each week of delay in reopening the road beyond such milestone date will be added to the amount allotted from such Fund specifically to the Village under section (C)(24)(B) below; (b) for a failure by the Design-Builder to limit total closure of the underlying road for the replacement of either the Nassau Boulevard Bridge or the Denton Avenue Bridge to no more than 2 weekend periods (excluding temporary or partial road closures for abutment and other ancillary work), as such time frame may be adjusted for force majeure or other causes not chargeable to the Design-Builder as per the Design-Build Contract, the sum of \$3,000/week for each week for each week the underlying road remains totally closed beyond

such two weekend period will be added to the amount allotted from such Fund specifically to the Village under Section (C)(24)(B); and (c) for a failure by the Design-Builder to meet the milestone date for Substantial Completion of the Project, as it may be adjusted for force majeure or other causes not chargeable to the Design-Builder as per the Design-Build Contract, the sum of \$5,000/week for each week Substantial Completion of the Project is delayed beyond such milestone date will be added to the amount allotted from such Fund specifically to the Village under Section (C)(24)(B). The Village agrees that this Section (C)(5) shall in no way limit or condition the LIRR's ability to enforce, negotiate, waive or compromise any liquidated damages payable by the Design-Builder to LIRR under the Design-Build Contract. In the event LIRR becomes obligated, pursuant to this Section (C)(5), to add certain sums to the amount allotted from the Project Community Fund specifically to the Village under Section (C)(24)(B), such obligation shall in no way be affected by any waiver or compromise of (i) any failure of the Design-Builder to meet any deadline, (ii) any breach of the Design-Build Contract by the Design-Builder, or (iii) any liquidated damages payable by the Design-Builder to the LIRR under the Design-Build Contract.

### **Communication Plan**

6. Prior to the start of construction, the Design-Build Contract will require the Design-Builder to create a Communications and Public Outreach Plan including a protocol for addressing community complaints and concerns as may be communicated by the Village or its residents.

7. The Design-Builder shall be required to give advance notification of any disruptive work or road closures to the Village, Village residents, municipalities, school districts and first-responders, and coordinate with the Village in connection with the resolution of such issues.

8. The Design- Builder shall provide regular updates to the Village and the public in the form of email blasts, automated phone calls, and online postings.

9. The Design-Builder shall staff a project office with on-site supervision, for the entire duration of the period when Work is being done in the Village, and shall have at least one (1) designated person available during the hours of 9 a.m. to 5 p.m., Monday through Saturday, to address community complaints and concerns.

10. The Design-Builder shall coordinate with local school districts to provide alternate transportation to schools where temporary or short-term road closures would either substantially increase walking distance to schools or make on-foot travel to schools substantially more problematic in terms of safety hazards.

11. The Design-Builder shall work with local schools to schedule nearby construction activity as unobtrusively as practicable, with sensitivity to the annual school calendar.

12. The Design-Builder shall coordinate with emergency service providers to ensure continuity of access to the community.

13. Prior to the start of construction of the Project, and thereafter at least one each calendar quarter, the LIRR shall conduct regular meetings with the LIRR, community representatives, and the Design-Builder to discuss construction activities, projected activities for the next calendar quarter, and community concerns.

14. The Design-Builder shall provide and staff a 24/7 construction hotline to receive and respond to input and complaints from Village residents or businesses in accordance with the Communications and Public Outreach Plan. The Design-Builder will maintain a log of all calls received, and track follow up. Copies of such logs shall be provided to the Village on a calendar monthly basis. If a call/complaint relates to a matter involving a significant imminent threat to human health or safety, the Design-Builder shall be required to respond immediately. In all other cases, the Design-Builder shall be required to respond within 24 hours.

15. The LIRR shall furnish the Village with the name and telephone number of a senior governmental liaison for the Project, who may be contacted at any time (24 hours/7 days a week) on Project-related issues and problems.

### **Traffic**

16. Prior to the start of construction of the Project, the Design-Builder shall establish and confirm acceptability of a proposed Work Zone Traffic Control Plan (WZTC) with the Village, residents, and affected police and emergency response jurisdictions to facilitate safe and effective enforcement. The WZTC shall give due consideration to Village traffic regulations and the location of local schools.

17. The WZTC Plan and the Design-Build Contract shall recognize the need for Village approval of any use of Village public roads not otherwise permitted under Village traffic regulations.

18. The Village agrees that approvals for the use of Village roads will not be unreasonably withheld by the Village.

19. The Design-Builder will restore/repair all damage to roads, and adjacent curbs and sidewalks, caused by construction vehicles using such roads in the course of construction of the Project, and all excess wear and tear on roads identified in the approved WZTC Plan as roads on which traffic will be diverted as a result of construction of the Project; the degree of restoration/repair required shall be decided upon by a committee comprised of a highway engineer designated by the Village and a highway engineer designated by LIRR, and shall be based upon (i) the design life of the road in question and how that design life has been adversely impacted by the Project, (ii) excluding ordinary wear and tear and damage not reasonably attributable to the Project, and (iii) giving due consideration to damage which is de minimis and can reasonably be repaired through measures that are less than a complete restoration. As an additional source of guidance, the committee shall also consult the Garden City Engineering Department's road paving guidelines, although the factors governing the degree of restoration/repair required are those set out in the previous sentence.

20. Traffic control shall be provided by the Design-Builder in consultation with Village to ensure safe and efficient routing of traffic.

### **Utilities**

21. The RFP will recognize the preference of the Village not to have utilities mounted on poles alongside the LIRR right of way. The RFP will require the Design-Builder to bury such utilities where determined by LIRR to be feasible, based on consideration of cost, safety, operational need and the consent of the owner(s) of such utilities. LIRR will consult with the Village on this subject prior to making a final determination.

### **Drainage**

22. Prior to the start of construction of the Project, the LIRR will work in good faith with the Village and the County to find the least intrusive drainage solutions for the Village that are economically feasible.

23. The Design- Build Contract will require the Design-Builder to restore roads disturbed by the drainage path, with restoration to be determined in the same manner as reflected in section (C)(19) above.

### **Project Community Fund**

24. Prior to the start of construction of the Project, the LIRR will establish a Project Community Fund, to be held by LIRR, in the aggregate amount of \$20 million, as follows:

(A) \$4 million as a general reserve, and

(B) \$16 Million to be allocated to the Project Villages, the Towns of North Hempstead and Oyster Bay (as representative for unincorporated areas along such corridor) and the County (8 recipients in total). The amount to be allocated to each recipient shall be based on a formula developed by LIRR that takes into account the relative amount of work to be done in each such Village and unincorporated area (based on geographic track work, grade crossing work, station work, bridge work, and substation work). The Village shall be allocated the sum of at least \$2.5 million.

25. Each recipient may apply its allotment from the Fund under Section (C)(24)(B) above for reimbursement of Qualified Costs (as hereinafter defined), upon written requisition from the Fund, accompanied by reasonable back-up documentation of the nature and purpose of the expenditure claimed as a Qualified Cost and proof of it being paid by the recipient. Qualified Cost shall mean a cost or expense incurred and paid for by the recipient (a) the reimbursement of which would be legally payable out of the proceeds of bonds, notes or other evidences of indebtedness issued by the State of New York or by the Metropolitan Transportation Authority in respect of the Project, (b) is otherwise fully legal under the laws of New York State for the recipient to incur and pay, (c) is directly related to the Project either by way of being used by a recipient to (i) engage technical consultants to assist in its review of the implementation of the Project, or (ii) implement measures to mitigate an impact on the recipient caused by the Project, or (iii) to reimburse the Village for police, traffic control and department of public works personnel costs and other related expenses, and (d) is not contrary to any State laws. The LIRR shall reasonably determine in good faith whether a claimed cost is a Qualified Cost based on the above criteria. Provided they otherwise meet all of the criteria set out in in this Section (C)(25), Qualified Costs may include (by way of example) fees payable to technical consultants to examine and review drainage or stormwater pollution prevention plans, review of environmental

remediation plan, costs of business district improvements to beautify downtown business districts and help offset loss of business resulting from any reduction in access due to Project construction, and costs of additional street sweeping/cleaning.

26. The amount of funds in the Project Community Fund may be augmented as provided in section (C)(5) above. Monies deposited into the Fund pursuant to Section (C)(5) shall be used to defray Qualified Costs.

Moreover, in the event construction of the Project (other than minor, punch list-type items) extends beyond a period of four (4) years from the date of the Notice to Proceed under the Design-Build Contract, for every calendar quarter that construction of the Project continues beyond such 4-year period up to the Substantial Completion Date of the Project, the sum of \$250,000 shall be added to the Project Community Fund to be allocated by the LIRR for the purpose of defraying Qualified Costs among the jurisdictions listed in Section (C)(24)(B), based on where the Project construction work occurring beyond such 4-year period is taking place, the nature of such work, and the nature of the impacts on the residents and businesses of the affected jurisdiction(s).

27. The general reserve under Section (C)(24)(A) above shall be used by the LIRR to reimburse any of the Project Villages for Qualified Costs incurred during the period of construction of the Project, for which insufficient monies remain in such Village's individual allotment under Section (C)(24)(B).

28. The remaining funds in the Project Community Fund shall not be recaptured by LIRR upon Substantial Completion of the Project but shall remain open and available for application for a period of two (2) years following Substantial Completion of the Project. If at any time, outstanding claims against the reserve fund exceed the remaining monies therein, LIRR shall have the right to allocate the remaining funds in a manner it determines to be equitable.

#### **Additional Reserve Fund**

29. An additional reserve fund of \$10 Million shall be created by the LIRR, to be held by LIRR, to be used to reimburse Project Villages for Qualified Costs associated with addressing Project-related impacts which arose after the Substantial Completion Date of the Project and which were unanticipated before such date. Such additional reserve fund shall remain open and available for application for a period of five (5) years following the Substantial Completion Date of the Project. Any unused funds remaining after such 5 year period shall revert to the LIRR. If at any time, outstanding claims against the additional reserve fund exceed the remaining monies therein, the LIRR shall have the right to allocate the remaining funds in a manner it determines to be equitable.

#### **Pre-Construction Condition Survey**

30. The Design-Builder shall conduct a pre-construction inspection and survey of the existing condition of all structures, roads and properties within the Village immediately adjacent to the LIRR Main Line Right of Way ("ROW") and within other agreed-upon project construction areas for the purposes of generating photographic and video documentation of

existing damage, leaks and cracks. The Village shall be entitled to accompany the Design-Builder or its consultant on such inspection and survey, if the Village so requests. The pre-construction condition survey shall form the basis against which all new cracks, existing progressive cracks, or damage will be measured. The Design-Builder shall pay, or reimburse the affected property owner, for all necessary repairs to address damage caused by construction of the Project in order to return the structure, road or property to its pre-construction condition, ordinary wear and tear excepted.

### **Pest Control**

31. In consultation with the Village the Design-Builder will employ rodent and pest control measures to ensure that pests and rodents are not a greater nuisance than in the pre-construction state.

### **Dust Control**

32. The Design-Build Contract shall require the Design-Builder to control dust emanating from the Project on public roadways.

33. The Design-Builder will employ reasonable measures to minimize the possibility of vehicles leaving the construction site depositing no mud or dirt on public roadways in the Village. Gravel cover shall be applied to soil (unpaved) surfaces where they will be regularly traveled at egress and ingress routes from/to work sites.

34. Vehicle mud and dirt carryout, material spills, and soil washout onto public roadways, walkways, and storm drains, and other paved areas in the Village shall be cleaned as necessary and when reasonably requested by the Village.

35. The Design-Builder is responsible for daily clean-up of public roadways and walkways in the Village affected by the Work. A wet spray power vacuum sweeper or similar equipment shall be used on paved roadways. Dry power sweeping is prohibited.

36. Prior to the start of construction of the Project, the Design-Builder shall provide the Village with a copy of all stormwater pollution prevention plans which the Design-Builder was required to prepare for the Project before construction begins.

### **Sound Attenuation Walls**

37. Sound attenuation barrier surfaces in the Village shall have architecturally treated concrete; LIRR will consult with and seek input from the Village on the nature of the treatment.

38. Sound attenuation barriers will be installed throughout the stretch of track in the Village from (a) approximately 20 feet from the eastern side of New Hyde Park Road to approximately 20 feet past the eastern boundary of Nassau Haven Park, (b) from approximately 20 feet from the eastern end of the overpass bridge at Denton Avenue to the western end of the Merillon Avenue Train Station, and (c) from approximately 10 feet from the eastern end of the overpass bridge at Nassau Boulevard to approximately 20 feet past 225 Whitehall Boulevard in the Village . Except as provided in the next sentence, the top of sound attenuation barriers in the

Village shall be at least 8' above the lower proposed ground line adjacent to the barrier or 4' above top of rail, whichever is greater. Between Stations 178+25 and 186+50 adjacent to residential properties along Greenridge Avenue, the top of the sound attenuation barrier will be approximately 10' above the lower proposed ground line adjacent to the barrier.

39. In consultation with the Village, landscaping and irrigation (where feasible, including availability of a water source within a reasonable distance) will be added at LIRR's cost near the wall on the outside of the LIRR ROW where space is available. From Tanners Pond Road due east to the recharge basin east of Whitehall Road, the track side face of the sound barrier along the southernmost track shall be located 15'-0" from the centerline of the southernmost track. In this area, trees and other landscaping will be provided in the LIRR Right of Way south of the barrier with such trees and landscaping, to the extent possible, mirroring and enhancing the landscaping prior to construction. Maintenance and care of all landscaping pursuant to this Section 39 (and irrigation system, where applicable) shall be, following installation, the responsibility of the Village or a community organization approved by the Village. The LIRR shall have no responsibility for maintaining such landscaping or irrigation systems for such landscaping.

### **Train Service**

40. The Project will not result in diminution of service along the Hempstead Branch. However, LIRR reserves the right, in the future to adjust service levels based on customer demand, equipment availability, operating needs and agency budget.

41. As per the analysis in the FEIS, the Project is projected to add 10 trains per day (combined off-peak and peak periods) serving the New Hyde Park and Merillon Avenue Stations, based on historic ridership and estimate ridership growth, including growth attributable to additional reverse peak service. While LIRR is committed to adding train stops to service such ridership growth, if achieved, the LIRR reserves the right to revise service levels based on customer demand, equipment availability, operating needs, and agency budget.

### **Visual Impacts**

42. The Design Build Contract will require the Design- Builder to consult with the Village on aesthetic finishes for stations, sound walls, substation and other Project elements, including the submission of the Design-Builder's plans for such aesthetic finishes for Village review. While final decision on aesthetic finishes rests with the LIRR, the LIRR shall, in a manner consistent with section (C)(3) above, give due and careful consideration to and respond (if applicable) to the Village's recommendations on such matters.

### **Environmental Measures:**

43. The Design-Builder shall be required to do the following in connection with Project Work within the Village:

44. Provide environmental monitoring of Project Work consistent with a Construction Health and Safety Plan (CHASP), and provide a copy of the CHASP to the Village prior to its final adoption for review and comment by the Village

45. Implement a Stormwater Pollution Prevention Plan (SWPPP) for Project Work in compliance with applicable law, and provide a copy of the SWPPP to the Village prior to its final adoption for review and comment by the Village.

46. Use directional lighting at night to limit light pollution to residences.

47. Implement an air quality control plan to include dust control measures, ultra-low sulfur diesel fuel, the use of best available tailpipe technologies such as diesel particulate filters, and the utilization, to the extent reasonably practicable, of advanced state of the art equipment, and provide a copy of the air quality control plan to the Village prior to its final adoption for review and comment by the Village.

48. Create and implement a community noise and vibration monitoring program. (CNV Program) and provide a copy of the CNV Program to the Village prior to its final adoption for review and comment by the Village. The Design-Builder shall be obligated to minimize construction-related vibration to the extent practicable and feasible.

49. Minimize noisy work during nighttime hours where practicable and feasible. The Design-Builder shall be obligated to provide reasonable advance notice to the Village of any anticipated excessively noisy nighttime work.

50. LIRR shall cause the Builder to conduct one (1) additional round of soil testing within LIRR's right of way within the Village, in areas where soil is expected to be disturbed during construction, at interval distances to be agreed upon by the Village and the Railroad, and provide copies of all test results to the Village; comply with all applicable federal and State environmental laws and regulations during construction of the Project, and require that any soil disturbed during construction be handled and disposed of in accordance with such laws and regulations.

### **Parking**

51. The Design-Builder shall provide additional parking to match the number of parking spaces in the Village lost during Project construction, in consultation with the Village

### **Construction Schedule**

52. The Design-Build Contract will not permit full closure of Covert Avenue to start before January 1, 2019.

53. The Design-Build Contract will limit two lane closure at New Hyde Park Road to nine months.

54. The Design-Build Contract will not permit the two lane closure of New Hyde Park Road until Covert Avenue is grade separated.

### **Stations**

55. Merillon Avenue station will not have any elevated pedestrian crossover, per Village request, and will instead be provided with a pedestrian underpass opening onto Nassau Boulevard as described in the FEIS.

56. In order to alleviate parking congestion in the Village resulting from project-related construction in the vicinity of the New Hyde Park Station, the LIRR agrees to reimburse the Village up to a not-to-exceed amount of \$350,000, for the repaving by the Village (utilizing a contractor procured by the Village) of the north parking area at the Stewart Manor Station. The terms and conditions of such reimbursement will be specified in a separate funding agreement between the LIRR and the Village.

57. The project will include an improved and enhanced Merillon Avenue station, to include platform piping to allow for installation of heated platforms in the future, if funding is identified and secured, WiFi, platform shelters, ADA accessibility by elevator from platform level down to existing underpass, and security cameras, along with other features as outlined in the FEIS.

### **Bridges**

58. LIRR will work with New York State Department of Transportation, Nassau County, and the Village on efforts related to rules prohibiting truck traffic along Nassau Boulevard and the enforcement thereof.

59. The Design-Build Contract will require no material change in the width of the Denton Avenue underpass. Any new /modified bridge (i) over Denton Avenue will be designed to have a maximum clearance of fourteen feet (14') between roadway surface and the underside of the bridge (provided, that a construction tolerance of up to 3 inches [i.e., to 14'3"] will be allowed to account for settling, subsidence of soils, or unanticipated site conditions), (ii) over Nassau Blvd. will be designed to have a maximum clearance of fourteen feet (14') between roadway surface and the underside of the bridge (provided, that a construction tolerance of up to 3 inches [i.e., to 14'3"] will be allowed to account for settling, subsidence of soils, or unanticipated site conditions), and (iii) over New Hyde Park Road will be designed to have a maximum clearance of fourteen feet (14') between roadway surface and the underside of the bridge (provided, that a construction tolerance of up to 3 inches [i.e., to 14'3"] will be allowed to account for settling, subsidence of soils, or unanticipated site conditions).

#### **D. Events of Default; Remedies.**

(a) If either Party shall default in its representations, warranties, covenants and obligations to be performed under this Memorandum, and such default shall continue for thirty (30) days after notice to the defaulting Party, or if it is not reasonable to cure such default within a thirty (30) day period, then such longer period as may be reasonable under the circumstances, the sole remedies of the non-defaulting Party shall be to seek to enjoin actions or to bring an action for specific performance of the defaulting Party's obligation under this Memorandum, provided that any such remedies must be initiated not later than ninety (90) days after the expiration of the cure period hereunder. Time shall be of the essence as of the expiration of such ninety (90) day period.

(b) Legal actions instituted due to any default must be instituted in the court located in the State of New York.

E. Notices. Any request, demand, authorization, direction, notice, consent, waiver, or other document provided or permitted by this Memorandum to be made, given or furnished to the other Party shall be in writing and shall be delivered by hand or by certified mail, return receipt requested or by overnight delivery service, in an envelope addressed as follows:

If to the Village:  
Village of Garden City  
Village Hall  
351 Stewart Avenue  
Garden City, New York 11530  
Attention: Village Administrator

With a copy to:

Peter A. Bee, Esq.  
Village Attorney  
Bee Ready Fishbein Hatter & Donovan LLP  
170 Old Country Road  
Mineola, New York 11501

If to the LIRR:

Long Island Rail Road Company  
Jamaica Station  
93-02 Sutphin Boulevard, 3<sup>rd</sup> Floor  
Jamaica, New York 11435  
Attention: Patrick A. Nowakowski, President

With a copy to:

Long Island Rail Road Company  
Jamaica Station  
93-02 Sutphin Boulevard, 4<sup>th</sup> Floor  
Jamaica, New York 11435  
Attention: Mark D. Hoffer, Esq.  
Vice President-General Counsel & Secretary

F. Miscellaneous Provisions.

(a) No Waiver. No failure on the part of either Party to exercise, and no delay in exercising, any right, power or remedy hereunder shall operate as a waiver thereof, nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or remedy. The remedies of the Parties provided herein are cumulative and not exclusive of any remedies provided for by law.

(b) No Third-Party Beneficiary. Nothing in this Memorandum shall be deemed to create any right in any person not a party hereto other than permitted successors and assigns of a Party hereto, and this Memorandum shall not be construed in any respect to be a contract in whole or in part for the benefit of a third party except as aforesaid.

(c) Severability. If any provision of this Memorandum shall be determined to be invalid, illegal or unenforceable in any respect, such determination shall not affect any other provision hereof.

(d) Headings. The headings contained in this Memorandum are for convenience only and shall not be interpreted to limit, control, or affect the meaning or construction of the provisions of this Memorandum.

(e) Joint Preparation. This Memorandum shall be deemed to have been jointly prepared by the Parties. This Memorandum has been negotiated by the Parties and their respective counsel and shall be interpreted fairly in accordance with its terms and without any strict construction in favor of or against either Party.

(f) Governing Law. This Memorandum shall be governed by and construed under the laws of the State of New York.

(g) No Recourse. No recourse shall be had by either Party for any claim against any officer, director, stockholder, elected or appointed government official, employee or agent of any other Party alleging personal liability on the part of such person with respect to performance of the LIRR's or the Village's obligations under this Memorandum.

(h) Counterparts. This Memorandum may be executed in any number of counterparts and by each Party on a separate counterpart, each of which when so executed and delivered will be deemed an original and all of which shall together constitute one and the same instrument. Delivery of an executed counterpart of a signature page of this Memorandum by facsimile or electronic mail transmission shall be effective as delivery of a manually executed counterpart to this Memorandum.

IN WITNESS WHEREOF, the parties have caused this Memorandum to be executed by their proper officials, pursuant to due and legal action authorizing the same, as of the day and year first written above.

THE LONG ISLAND RAIL ROAD COMPANY

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

THE VILLAGE OF GARDEN CITY

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

STATE OF NEW YORK )

COUNTY OF \_\_\_\_\_ ) ss.:  
)

On the \_\_\_\_\_ day of \_\_\_\_\_ in the year 20\_\_\_\_, before me, the undersigned, a Notary Public in and for said State, personally appeared \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

\_\_\_\_\_  
Notary Public

STATE OF NEW YORK )

COUNTY OF \_\_\_\_\_ ) ss.:  
)

On the \_\_\_\_\_ day of \_\_\_\_\_ in the year 20\_\_\_\_, before me, the undersigned, a Notary Public in and for said State, personally appeared \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

\_\_\_\_\_  
Notary Public